

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN STEVEN OLAUSEN,
Petitioner,
vs.
NEVADA BOARD OF PRISON
COMMISSIONERS AND THE GRAND
JURY FOR COUNTY OF WHITE PINE
IN THE STATE OF NEVADA,
Respondents.

No. 44550

FILED

SEP 23 2005

JANE LEE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original proper person petition for a writ of mandamus seeks to compel respondent Nevada Board of Prison Commissioners to comply with several prison regulations and state statutes pertaining to health concerns, and requests this court to order a grand jury investigation of an alleged infectious bacterial outbreak at the Ely State Prison and/or Nevada Department of Corrections building.

In particular, petitioner is apparently concerned that he is not receiving adequate treatment of his alleged medical condition and that many others are consequently being exposed to infectious bacteria. In part, petitioner asserts that the Nevada Board of Prison Commissioners is not maintaining adequate control over the prison system because prison officers and employees have failed to take adequate precautions to prevent the bacteria's spread by, for instance, promptly removing and properly disposing of used medical supplies/bodily fluids from petitioner's cell and removing him from a job position that puts him in contact with others' food.

A writ of mandamus may issue to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion.¹ Original petitions for mandamus are addressed to the sound discretion of this court.² However, this court will not exercise its discretion, even when important public interests are involved, when factual, rather than legal, issues are presented.³ Instead, as this court has repeatedly indicated, petitions raising factual issues should be brought in the district court.⁴

This petition presents numerous issues that cannot be resolved without an extensive inquiry into, and several determinations regarding, petitioner's factual allegations of unsafe health conditions within the prison. Consequently, while we recognize the seriousness of petitioner's assertions, this original petition presents significant factual issues, and petitioner inappropriately seeks extraordinary relief in this court. As we recognized in Round Hill General Improvement District v. Newman,⁵ petitions raising factual issues should be filed in the district court.⁶ Moreover, we note that it is the district court that initially

¹NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

²State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983); NRAP 21; see also Nev. Const. art. 6, § 4.

³Round Hill Gen. Imp. Dist., 97 Nev. at 604, 637 P.2d at 536.

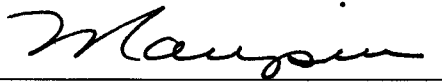
⁴Id.

⁵97 Nev. 601, 637 P.2d 534 (1981).

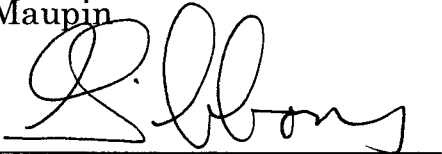
⁶See also Nev. Const. art. 6, § 6 (granting district courts authority to issue writs of mandamus); NRS 34.160.

possesses the authority to consider requests to impanel grand juries for investigative purposes.⁷ Accordingly, we

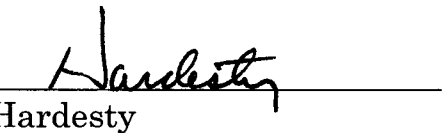
ORDER the petition DENIED.⁸

 _____, J.

Maupin

 _____, J.

Gibbons

 _____, J.

Hardesty

cc: John Steven Olausen
Attorney General Brian Sandoval/Carson City

⁷See In re Report Washoe Co. Grand Jury, 95 Nev. 121, 126-27, 590 P.2d 622, 625-26 (1979); NRS 6.110-6.140; NRS 172.047; NRS 172.175.

⁸Although petitioner was not granted leave under NRAP 46(b) to file documents in proper person, we have received and reviewed the documents he submitted pertaining to his financial condition. Accordingly, the clerk of this court shall file the documents and motions to proceed in forma pauperis, provisionally received on February 3, 8, and 22, 2005, and August 10, 2005. We conclude that petitioner has demonstrated good cause to waive the filing fee in these writ proceedings, see NRAP 21(e); therefore, we grant petitioner's motion for leave to proceed in forma pauperis—no filing fee is due.